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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

JOSEPH R. TEITGEN,

Petitioner,

v.

A096784

(Solano Co. Super.

Ct. No. VCR147394)

THE SUPERIOR COURT OF  
SOLANO COUNTY,

Respondent;

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PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest. /

Petitioner Joseph Teitgen seeks a writ of mandate to require the disqualification of Judge Harry Kinnicutt. We conclude that Judge Kinnicut was disqualified under section 170.1, subdivision (a)(6)(C), of the Code of Civil Procedure.

Petitioner is charged with the capital murder of a Vallejo police officer, Jeffrey Azuar, and the attempted murders of two other officers, Larry Rogers and Douglas

Wilcox. Petitioner served a motion to disqualify Judge Kinnicutt pursuant to Code of Civil Procedure section 170.1.

Petitioner's challenge centered on the fact that the murder victim was a longtime member of the Vallejo Police Department and highly respected in the community. Over 4,000 mourners attended his funeral, including at least eight judges, one of whom was Judge Kinnicutt. Petitioner noted that Judge Kinnicutt was a deputy district attorney in Solano County and worked under Judge Michael Nail, when Nail was the District Attorney of Solano County. Judge Nail has disqualified himself and petitioner intends to call him as a witness in the criminal case. Petitioner further alleged that Judge Kinnicutt had a professional relationship with Officers Rogers and Wilcox while employed as a deputy district attorney and accepted campaign contributions from the Vallejo Police Officers Association (\$1500) and other law enforcement entities and individuals in his 1994 election. Petitioner also alleged that Judge Kinnicutt harbored animus towards one of petitioner's attorneys because her law partner publicly announced he was considering challenging Judge Kinnicutt in his 2000 re-election bid. Finally, petitioner noted Judge Kinnicutt's judicial assistant is the wife of a district attorney who contributed to his 1994 campaign.

In his verified response, Judge Kinnicutt stated he had no bias against petitioner or in favor of Officer Azuar, held no animus toward petitioner's counsel, and would afford petitioner a fair trial. Judge Kinnicutt admitted attending Azuar's funeral out of respect for human life and law enforcement in general and receiving campaign contributions from the Vallejo Police Officers' Political Action Committee and law enforcement

entities and individuals. Judge Kinnicutt also admitted he served as a deputy district attorney under Judge Nail when the latter was district attorney; that it was likely he worked in some professional capacity as a 17-year deputy district attorney with Officers Rogers and Wilcox; and that his judicial assistant is married to a deputy district attorney from Solano County.

On October 30, 2001, Judge Cerena Wong, the judge appointed to determine the challenge, denied the motion to disqualify. This petition followed. We requested opposition and stayed all further proceedings before Judge Kinnicutt pending our consideration of the merits of the petition.

Code of Civil Procedure section 170.1, subdivision (a)(6)(C), provides that a judge shall be disqualified if “a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.” The standard for disqualification provided for in subdivision (a)(6) (C) of section 170.1 is fundamentally an objective one. If a reasonable member of the public at large, aware of all the facts, would fairly entertain doubts concerning the judge's impartiality, disqualification is mandated. The existence of actual bias is not required. (*United Farm Workers of American v. Superior Court* (1985) 170 Cal.App.3d 97, 104.) “ ‘While this objective standard clearly indicates that the decision on disqualification not be based on the judge's personal view of his own impartiality, it also suggests that the litigants’ necessarily partisan views not provide the applicable form of reference.’ [Citation.] The facts and circumstances prompting the challenge must be evaluated as of the time the motion is brought and the evaluation of a challenge under section 170.1 (a)(6)(C) must not isolate facts or comments out of

context. [Citations.] The challenge must be to the effect that the judge would not be able to be impartial toward a particular party. [Citation.]” (*Flier v. Superior Court* (1994) 23 Cal.App.4th 165, 170-171.) Where, as here, the underlying events are not in dispute, disqualification on this ground becomes a question of law which this court may determine. (*Id.* at p. 171.)

Real party in interest, looking at the facts in isolation, finds no support for a disqualification order. Although arguably no one factor would be enough to require recusal, we conclude that due to the cumulative effects of all the facts in this case, a reasonable member of the public at large would fairly entertain doubts concerning Judge Kinnicutt’s ability to be impartial. In reaching this decision, we emphasize that there is no evidence Judge Kinnicutt harbors any actual bias or prejudice toward petitioner; that is not, however, the most relevant factor.

We have reached our decision after notice to all parties that we might act by issuing a peremptory writ in the first instance and after considering opposition from real party in interest. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.) Petitioner is entitled to relief and there is a compelling urgency in light of the approaching trial date. (See *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1241; *Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1223.)

Let a peremptory writ of mandate issue directing respondent superior court to vacate its order of October 30, 2001, denying petitioner’s motion to disqualify Judge Kinnicutt and to enter a new and different order granting the motion. The stay of proceedings previously imposed is lifted. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(d).)

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Kline, P.J.

We concur:

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Haerle, J.

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Lambden, J.